No. 18-966

In The Supreme Court of the United States

DEPARTMENT OF COMMERCE, et al.,

Petitioners,

v.

NEW YORK, et al.,

Respondents.

On Writ Of Certiorari Before Judgment To The United States Court Of Appeals For The Second Circuit

BRIEF OF COUNTY OF SANTA CLARA, CITY OF LOS ANGELES, NINE ADDITIONAL LOCAL JURISDICTIONS, AND THE NATIONAL LEAGUE OF CITIES AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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CASES

Avery v. Midland Cty., Tex.,
390 U.S. 474 (1968) 18

Brown v. Board of Ed.,
347 U.S. 483 (1954) 2

Brown v. Thomson,
462 U.S. 835 (1983) 18

California v. Ross,
No. 3:18-cv-1865, 2019 WL 1052434
(N.D. Cal. Mar. 6, 2019) 14, 15, 23, 25, 27

Evenwel v. Abbott,
136 S. Ct. 1120 (2016) 18

Fed'n for Am. Immigration Reform v. Klutznick,
486 F. Supp. 564 (D.D.C. 1980) 24

Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.,
471 U.S. 707 (1985) 1

Holt Civic Club v. Tuscaloosa,
439 U.S. 60 (1978) 1

Reynolds v. Sims,
377 U.S. 533 (1964) 18, 19, 20

Utah v. Evans,
536 U.S. 452 (2002) 18, 20, 21

Wesberry v. Sanders,
376 U.S. 1 (1964) 20

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CONSTITUTIONAL PROVISIONS

U.S. CONST. art. I, § 2, cl. 3 ..... 6, 18, 19, 20, 21

OTHER REFERENCES

John Adams, Letter to Joseph Hawley (Aug. 25, 1776), quoted in C. James Taylor, ed., FOUNDING FAMILIES: DIGITAL EDITIONS OF THE PAPERS OF THE WINTHROPS AND THE ADAMSES (2015) 20

M. Baum et al., *Estimating the Effect of Asking About Citizenship on the U.S. Census: Results from a Randomized Controlled Trial* (Mar. 2019), https://perma.cc/6X2P-3JRT 23

A. Castillo, *Immigrant arrested by ICE after dropping daughter off at school, sending shockwaves through neighborhood*, L.A. Times, Mar. 3, 2017, https://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html 29

Centers for Disease Control, *CDC's Social Vulnerability Index Fact Sheet* (Sept. 10, 2018), https://perma.cc/779V-6U7W 9

Cong. Globe, 39th Cong., 1st Sess. (1866)

p. 353 21

p. 359 21

p. 432 21

p. 961 22

p. 2944 22

TABLE OF AUTHORITIES – Continued

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County of Santa Clara, *Open Data Portal: Social Vulnerability Index*, https://perma.cc/NK3Y-LYT8 10

The Federalist No. 54 (James Madison).....21

B. Flanagan et al., *A Social Vulnerability Index for Disaster Management*, 8(1) J. Homeland Sec. & Emergency Mgmt. art. 3 (2011), https://perma.cc/TXN7-C7V3.....9, 10

Georgia Dep't of Public Health, *Georgia Social Vulnerability Index 2010 Atlas* (2014), https://perma.cc/74S7-S6CC.....9

M. Hotchkiss & J. Phelan, U.S. Census Bureau, *Uses of Census Bureau Data in Federal Funds Distribution* (Sept. 2017), https://perma.cc/BQ32-MKM2.....14

ICE raids and rumors paralyze San Jose communities, KGO-TV, Mar. 1, 2018, https://perma.cc/E8KG-WWAR.....29

Thomas Jefferson, Letter to William King (1819), Jefferson Papers, Library of Congress, Vol. 216, p. 38616.....20

E. Kissam et al., *San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020* (2019), https://perma.cc/7EQU-34G2 23

Los Angeles Unified School District, *2018 Developer Fee Justification Study* (Mar. 2018), https://perma.cc/D7VD-G52X 13

TABLE OF AUTHORITIES – Continued

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Los Angeles Unified School District, *Student Demographics*, https://my.lausd.net/opendata/dashboard 4

S. Mathema, *Keeping Families Together* (Mar. 16, 2017), https://perma.cc/U92J-B5PT 28

B. Mejia & J. Ulloa, *ICE arrests in courtrooms escalate feud between California and Trump administration over immigration policy*, L.A. Times, Aug. 29, 2018, https://www.latimes.com/local/lanow/la-me-ln-ice-courtroom-arrest-20180829-story.html 28

B. Mejia, *ICE arrests 150 immigrants in latest Los Angeles-area operation*, L.A. Times, Sept. 26, 2018, https://www.latimes.com/local/lanow/la-me-ln-ice-arrests-20180926-story.html 28

Migration Policy Institute, *Profile of the Unauthorized Population: Los Angeles County, CA*, https://perma.cc/Y53Q-MG56 4

Migration Policy Institute, *State and County Estimates of Unauthorized Immigrants* (Sep. 26, 2016), https://perma.cc/N6N7-SMKL 4

U.S. Census Bureau:

1980 Census of Population and Housing History (Aug. 1989), https://perma.cc/N95J-E3UT 24

2020 Census CBAMS Focus Group Final Report (Jan. 24, 2019), https://perma.cc/N3ZR-YQUH... 25, 27

About Hispanic Origin (Mar. 7, 2018), https://perma.cc/GZ7D-AP5Y 4

TABLE OF AUTHORITIES – Continued

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QuickFacts: Los Angeles County, California, https://perma.cc/TZ76-TE9Z 3, 4

QuickFacts: Santa Clara County, California, https://perma.cc/8KNZ-FYYG 4

U.S. Dep't of Ag., *About WIC–How WIC Helps* (Nov. 18, 2013), https://perma.cc/3FUF-UV4F 15

J. Wadsworth, *Nationwide ICE Raids Lead to 21 Arrests in Santa Clara County*, San Jose Inside, Sept. 29, 2017, https://perma.cc/9X35-Z3J5 29

A. Wolkin et al., *Reducing Public Health Risk During Disasters: Identifying Social Vulnerabilities*, 12 J. Homeland Sec. & Emergency Mgmt. 809 (Dec. 2015), https://perma.cc/8WN8-7AVM 11

INTEREST OF AMICI CURIAE

Amici represent diverse local jurisdictions that will be profoundly affected by the undercount that would result from the addition of a citizenship question to the 2020 Decennial Census (the "2020 Census").[1] Across the country, local governments have sole or primary responsibility for performing many of the basic governmental functions that protect public health and safety. These responsibilities include planning for and responding in disaster and emergency situations; operation of safety-net healthcare facilities; monitoring, identifying, and responding to emerging epidemics; providing vaccinations, nutrition, substance abuse and mental health services; investigating and prosecuting crime; and providing many other critical services that support the safety and well-being of the entire population. See, *e.g.*, *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985) (residents' health and safety are "primarily, and historically, matters of local concern"); *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 74 (1978) ("police, fire, and health protection" are "basic municipal services" whose delivery is a "city's responsibility"). And school districts bear primary responsibility for "perhaps the most important function of state and local governments," providing the

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[1] The parties have consented to the filing of this brief; their written consents are on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than the Amici or their counsel made a monetary contribution to the preparation or submission of this brief.

education without which "it is doubtful that any child may reasonably be expected to succeed in life." *Brown v. Board of Ed.*, 347 U.S. 483, 493 (1954).

An accurate decennial census is the foundation on which many of the vital services provided by local governments are built. Numerous critical local government functions rely upon accurate census data as the cornerstone of planning and operations. From locating vaccination clinics during a disease outbreak to determining where to send first responders during evacuations, accurate census data is necessary to provide services that save lives.

Moreover, local governments and school districts provide many essential services using federal government funding that is set based on census-based population data. From providing support to crime victims to addressing infant mortality, census-based funding is essential to the nation's communities. A decennial census that differentially undercounts Amici's populations will inappropriately reduce funding for these important services—with no corresponding reduction in actual population or need.

The inaccuracies caused by the citizenship question will also threaten fundamental political rights. The citizenship question will distort the data that is the basis for state and local redistricting—and the basis for ensuring that local government is truly representative of the people.

Amici's experience demonstrates that, in the current environment of fear and distrust of government,

the addition of a citizenship question to the 2020 Census would deeply affect their communities' perception of the Census—and willingness to respond to it. Given their functions, Amici are closely connected to their residents and uniquely positioned to gauge changes in their communities' interactions with, and attitudes toward, all levels of government. Amici's own experience bears out the trial court's well-documented finding that adding the citizenship question would cause particular harm in the current "macroenvironment"—that is, the currently prevalent environment of heightened fear and distrust of the government among immigrant communities. Amici's communities perceive the proposed citizenship question as tied to immigration enforcement, and it is the lens through which they would view the census if the question were added.

Amici collectively represent a large segment of the national population that would be undercounted by a 2020 Census that includes the proposed citizenship question. With high concentrations of community members likely to be undercounted because of the citizenship question, Amici have a particular interest in the legality of that question and would suffer particular harm from its inclusion in the 2020 Census.

For example, the County of Los Angeles has more than 10 million residents. U.S. Census Bureau, *QuickFacts: Los Angeles County, California*, https://perma.cc/TZ76-TE9Z. Fully a third of its residents

are foreign-born, nearly half are Latino,[2] and an estimated 11 percent are undocumented. *Id.*; Migration Policy Institute, *Profile of the Unauthorized Population: Los Angeles County, CA*, https://perma.cc/Y53Q-MG56. Similarly, the Los Angeles Unified School District enrolls almost a half-million students, over 73 percent of whom are Latino—far above national and state averages. Los Angeles Unified School District, *Student Demographics*, https://my.lausd.net/opendata/dashboard (click on "Ethnicity" under "Student Groups"). And Santa Clara County is home to 1.9 million residents, almost 40 percent of whom are foreign-born. More than 25 percent of its population is Latino and roughly seven percent is undocumented. Migration Policy Institute, *State and County Estimates of Unauthorized Immigrants* (Sep. 26, 2016), https://perma.cc/N6N7-SMKL; U.S. Census Bureau, *QuickFacts: Santa Clara County, California*, https://perma.cc/8KNZ-FYYG.

Amici are: the County of Santa Clara, Calif., the City of Los Angeles, Calif., the City of Baltimore, Md., the City of Long Beach, Calif., the City of Oakland, Calif., the City of Sacramento, Calif., King County, Wash., the County of Los Angeles, Calif., the County of San Mateo, Calif., the Los Angeles Unified School

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[2] Consistent with the Census Bureau's practice, this brief treats the term "Latino" as capturing the same population as the term "Hispanic," which is the term used by the District Court in this case. U.S. Census Bureau, *About Hispanic Origin* (Mar. 7, 2018), https://perma.cc/GZ7D-AP5Y.

District, the Santa Clara Unified School District, and the National League of Cities.[3]

SUMMARY OF ARGUMENT

Governments must be able to see their residents to serve them. The United States decennial census is the best—in many cases, the only—way for governments to understand the location and composition of their populations. Particularly in the current climate of fear and distrust of government that exists in immigrant communities, a 2020 Census that includes a citizenship question will depress census participation and render a great many Americans invisible to all levels of government. That is a threat not just to these individuals and the communities they call home, but to the nation as a whole.

In communities like Amici's, the addition of a citizenship question is a fundamental threat to local governments' ability to conduct essential operations that serve all residents. States and local governments across the country rely heavily on accurate census data to ensure public health and safety. They use this data throughout their operations, including to target resource allocation, emergency response, and critical health operations. Census data also determines the level of funding that local governments and schools

[3] The National League of Cities is a resource and advocate for 19,000 cities, towns, and villages, representing more than 218 million Americans and 49 state municipal leagues.

receive from the federal government. This funding is used to support and benefit all members of the community—from assistance to crime victims to foster care and nutritional support for low-income children.

An inaccurate census also undermines Americans' fundamental right to equal representation because it denies governments the information necessary to draw local and state electoral districts that contain the same number of people. When officials charged with drawing electoral districts do not know how many people live within a local government's jurisdiction and where within that jurisdiction they reside, they cannot know where district lines should fall to ensure their electoral maps afford all residents equal voice in government. Because these line-drawing efforts invariably rely on the census, incomplete, distorted, or otherwise inaccurate census data will necessarily corrupt the enterprise of representative democracy through which government serves the people.

In the current macroenvironment, addition of the proposed citizenship question to the 2020 Census is also inconsistent with the core principles and requirements of the U.S. Constitution's Enumeration Clause. As the District Court correctly found, there is no meaningful dispute that the addition of a citizenship question on the 2020 Census will cause enormous damage to the accuracy of the census, including both its enumeration of the total population and the quality and reliability of data regarding demographic and socioeconomic characteristics. Pet. App. 116a, 159a, 168a–171a. This acknowledged inaccuracy will be differentially reflected

in the count of members of Latino and non-citizen households—the kinds of households that are represented in high rates in Amici's communities. *Id.*

The likely magnitude of the undercount is much higher than initially estimated by the Census Bureau. As Petitioners' own expert witness testified and the District Court correctly found, recent changes in the macroenvironment will exacerbate the undercount caused by addition of a citizenship question. Amici's experience is consistent with this finding: immigrant and immigrant-adjacent communities within their jurisdictions have increasingly withdrawn from civic life and repeatedly expressed reluctance to respond to a census asking about their citizenship status because they fear the consequence of doing so. In this context, these acknowledged facts render the addition of a citizenship question to the 2020 Census unlawful.

ARGUMENT

The federal administration's plan to include a citizenship question on the 2020 Census threatens the health, safety, and basic political rights of all of Amici's residents—and the residents of jurisdictions across the nation.

I. Accurate Census Data Is the Foundation for Lifesaving Planning and Services That Protect the Entire Community.

A. Local Governments Require Accurate Census Data to Plan for Disasters, Halt Disease Outbreaks, and Ensure Local Health and Safety.

Local governments across the country use census data throughout their operations to perform essential functions. As discussed in more detail below, *infra* 22-29, there is no meaningful dispute that the addition of a citizenship question to the 2020 Census will cause a significant differential undercount of local jurisdictions' residents. This inaccuracy will frustrate a variety of critical government services. But the most severe and immediate effects of inaccurate data are likely to be to emergency operations and public health, where access to accurate data can mean the difference between lives saved and lost. As a result, although the citizenship question will differentially affect response rates among certain populations, the effects of the resulting inaccurate census data will be felt by all residents, whose lives are connected by neighborhoods and places of work, worship, commerce, and recreation, and who rely on local governments for basic health and safety services.

For local governments, emergency preparedness is particularly urgent in view of frequent catastrophic weather events. In the State of California, each fire season brings more, and more intense, wildfires requiring evacuations and interventions. Current flooding

in the Midwest underscores that local jurisdictions throughout the country must prepare for such disasters. In the event of such an emergency, an infectious disease outbreak or a terrorist event, local jurisdictions are responsible for coordination and contribution of personnel, equipment, and expertise.

Thus, like their counterparts in other regions, several Amici are responsible for developing advance disaster plans enabling immediate allocation of resources like first responders, evacuation assistance, and vaccination clinics. This planning depends on having accurate data reflecting the composition and location of the local jurisdictions' residents—data that, in Amici's experience, is only reliably produced by the decennial census.

Social Vulnerability Indexes (the "Indexes") illustrate the importance of census data for disaster planning. These Indexes are used by governmental emergency managers to identify communities whose members are "more likely to die in a disaster event and less likely to recover after one." B. Flanagan et al., *A Social Vulnerability Index for Disaster Management*, 8(1) J. Homeland Sec. & Emergency Mgmt. art. 3, at 3 (2011), https://perma.cc/TXN7-C7V3 (internal quotation marks and citations omitted). They guide resource allocation before and during emergencies to protect those most likely to need government intervention to survive and recover. *Id.*; see also Centers for Disease Control, *CDC's Social Vulnerability Index Fact Sheet* (Sept. 10, 2018), https://perma.cc/779V-6U7W; Georgia Dep't of Public Health, *Georgia Social Vulnerability*

Index 2010 Atlas (2014), https://perma.cc/74S7-S6CC; County of Santa Clara, *Open Data Portal: Social Vulnerability Index*, https://perma.cc/NK3Y-LYT8.

The Indexes use census data to identify regions with populations and features that emergency-management research has identified as indicators of increased need. Flanagan, *supra*, at 4. These indicators include, for example, the presence of the elderly and children, who are vulnerable during a disaster; dense housing; lack of vehicles; families below the poverty line; and minority and low-English-proficiency populations. *Id.* at 4–6. In an emergency, access to census data on these populations and an Index that aggregates it allows local governments to quickly identify areas of need and respond effectively. For example, in the case of a wildfire requiring evacuation, first responders can immediately target evacuation assistance by locating populations that may not be able to evacuate without assistance due to age, disability, or lack of vehicle access.

The decennial census and American Community Survey ("ACS") are the bases of the Indexes; both data sources will be deeply corrupted by a citizenship question.[4] This inaccuracy could cost lives in an emergency,

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[4] Inaccuracies in the decennial census will cause inaccuracies in the ACS because the ACS relies heavily on the decennial census for imputation, sample design, weighting, and other factors. See, *e.g.*, Decl. of Andrew Reamer at ¶ 28, *New York v.*

particularly because distrust of government in vulnerable populations makes it difficult for emergency managers to otherwise identify those populations. See, *e.g.*, A. Wolkin et al., *Reducing Public Health Risk During Disasters: Identifying Social Vulnerabilities*, 12 J. Homeland Sec. & Emergency Mgmt. 809–822 (Dec. 2015), https://perma.cc/8WN8-7AVM ("The most commonly cited barrier [to identifying at-risk populations] was difficulty with outreach to certain at-risk populations. There were several emergency managers who discussed the lack of willingness of some individuals and organizations to share information for various reasons, such as distrust of government. . . ."). If socially vulnerable individuals and communities are rendered less visible to the census, they will be less visible to first responders in critical moments.

And even jurisdictions that do not rely on the Indexes create their own analyses using census data for disaster preparedness. For example, the City of Baltimore has relied heavily on census data to create maps related to various vulnerabilities as part of the City's disaster preparedness plan.

Similarly, officials use census data in a disaster or disease outbreak to ensure that emergency resources like clinics and emergency shelters are available and properly located. Census data is also used to ensure that public health departments have adequate vaccine stocks to respond in the event of an outbreak. Given the potential for diseases to spread through

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United States Dep't of Commerce, No. 1:18-cv-2921 (S.D.N.Y. Nov. 7, 2018) (Doc. No. 508-1).

workplaces, shopping districts, and public spaces, the importance of the data is not theoretical. For example, during Santa Clara County's recent H1N1 outbreak, the County Public Health Department used census data to place vaccination clinics as part of its efforts to mitigate the spread of the disease.

Law enforcement likewise relies on census data. For example, the City of Baltimore has used census data in its Violence Reduction Initiative. This initiative enhances community safety by deploying officers with particular skills, including bilingual ability, to specific zones of the City.

In all these cases, local governments require data that accurately reflects the population in order to protect it. An inaccurate 2020 Census means that there will likely be concentrations of individuals who are invisible to local government. This could significantly undercut local governments' ability to evacuate vulnerable individuals, slow or halt an epidemic, and properly allocate law enforcement personnel. While *citizenship* data does not assist in fulfilling any of these functions, *accurate* population data is critical.

Accurate data is extraordinarily important for local government land-use planning as well. For example, the County of Los Angeles uses census data in developing its General Plan, which serves as the blueprint for decades of growth. Census data is used in conducting assessments of housing needs to ensure safe, sanitary, and affordable housing for Los Angeles County residents, including those with special needs. Likewise, LAUSD, like other school districts, relies

on accurate census data to project future enrollment arising from planned residential construction. See, *e.g.*, Los Angeles Unified School District, *2018 Developer Fee Justification Study* (Mar. 2018), https://perma.cc/D7VD-G52X. Without accurate data, local jurisdictions are likely to struggle to meet the needs of growing populations.

Nor is there any substitute for census data in performing these functions. Particularly before the Census Bureau adopted the ACS, which is updated more frequently than the decennial census, the County of Santa Clara attempted to supplement census data through the use of private demographers. The effort failed; the private information simply was not reliable enough at the level of granularity required by local government operations. Moreover, like the ACS, private data is often based on the decennial census and therefore may not be a true alternative.

The federal administration's plan to adopt the citizenship question and knowingly undermine the accuracy of the 2020 Census data is especially perplexing because it is unnecessary. The Census Bureau's own professionals have indicated that the data from a citizenship question would be "'substantially less accurate'" than data available from administrative sources. Pet. App. 114a (quoting Memorandum from John M. Abowd to Wilbur L. Ross, Jr., Technical Review of the Department of Justice Request to Add Citizenship Question to the 2020 Census at AR 1277–85 (Jan. 19, 2018)). In contrast, the detailed and accurate population data on which local governments rely is not

available from sources other than the decennial census. The risks outlined above are far too high a price to pay for poor-quality data, especially in view of the acknowledged availability of better-quality data regarding citizenship from other sources.

B. Local Governments Rely on Census-Based Funding to Provide Vital Services.

According to the Census Bureau, in the 2015 fiscal year alone, census data was used to distribute more than $675 billion in federal funds. M. Hotchkiss & J. Phelan, U.S. Census Bureau, *Uses of Census Bureau Data in Federal Funds Distribution* 8 (Sept. 2017), https://perma.cc/BQ32-MKM2. A large portion of this census-based funding goes to basic services like nutrition support and healthcare for the community's most vulnerable members, including victims of crime and children who are low-income or have been subjected to severe abuse and neglect. *Id.* at 16. Much of this funding ultimately flows to local governments, and local governments are in many cases responsible for administering these programs.

For example, in California, counties administer programs including victims' services offices; Medicaid; Temporary Assistance to Needy Families ("TANF"); the Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"); Community-Based Child Abuse Prevention; and foster care. The evidence at trial in both this case and in *California v. Ross* showed that, even in "almost implausibly conservative" undercount scenarios, funding for these critical

programs would be reduced for many states and local jurisdictions. Pet. App. 178a–182a; *California v. Ross*, No. 3:18-cv-1865, 2019 WL 1052434, at *20 (N.D. Cal. Mar. 6, 2019).

Many of these programs provide lifesaving benefits. WIC is one example; according to the federal government itself, "WIC saves lives," and "improves the health of nutritionally at-risk women, infants and children." U.S. Dep't of Ag., *About WIC–How WIC Helps* (Nov. 18, 2013), https://perma.cc/3FUF-UV4F. WIC provides food, nutrition education, breastfeeding promotion and support, referrals, and access to health and social services to low-income infants and their mothers.

Unsurprisingly, providing access to such basic necessities has a profound impact on the health of recipients and the community as a whole. For example, access to WIC benefits reduces infant deaths, improves cognitive development in children, and increases the likelihood that children will have regular medical care and up-to-date immunizations. *Id.* All of this results in savings to the public as a whole. Children with these supports have the foundation to be healthy, productive members of their communities—and in the short term, WIC has been shown to nearly halve healthcare costs in the first 60 days after birth. *Id.*

Local governments also rely heavily on census-based funds, including child abuse prevention funds, foster care funds, and social services block grants to

operate foster care and programs for the prevention and of child abuse. These programs identify and protect children who are victims of physical or sexual abuse or serious neglect. They provide support for children and families that can be safely kept together or reunited and safety for those who cannot. In some cases, connecting families to the nutrition benefits outlined above can keep children in their homes and avoid the trauma of family separation. In other cases, however, a child's safety requires placement with a different family. In relocation cases, local governments provide support to the foster families that provide children with a stable and safe living environment. Like nutrition support, protecting children from abuse and providing safe homes promotes the health of the entire community by promoting the health and safety of its children. Census-based funding is important to these efforts.

Schools also depend on census-based funding to support vulnerable student populations. For example, schools use Title I funds to provide services to students who might not be able to remain in school without support. Local schools that already face challenges in providing basic classroom services are likely to have to curtail or cut any non-essential services if funding is reduced.

Census-based funds also provide important support to law enforcement agencies and victims of crime. Local jurisdictions across the country rely on grants for services to crime victims. They provide funding for victims' services offices that assist victims of domestic

abuse, elder abuse, and child sexual abuse with services including help with filing claims for compensation, advocacy within the criminal justice system, crisis counseling, and emergency financial assistance. The work of Amici's victims' services offices, which are partly supported by these funds, makes a significant difference in the lives of victims of crime.

Filling gaps left by reduced federal funding will mean fewer resources for other community needs. Local governments have a near-universal charge to do more with less, and many local governments struggle to meet their basic obligations. The addition of a citizenship question to the 2020 Census would artificially reduce federal funding with no corresponding reduction in the level of services necessary to maintain a healthy community. As a result, already-burdened local governments may be forced to reduce essential services, causing significant harm to residents who need the most support.

And such a reduction is not faithful to Congressional intent in adopting the census as a basis for funding. Until now, the decennial census has been the most reliable source of population data. It is hard to imagine that when Congress adopted the census as the basis for federal funding decisions, it meant for those decisions to be distorted in ways that differentially harm certain communities.

C. Local Governments Need Accurate Census Data to Ensure Electoral Districts Advance Principles of Representative Democracy.

Amici, like local governments across the country, rely on accurate census data to fulfill their obligation under the Equal Protection Clause to ensure equality of population among their legislative districts. This Court has repeatedly observed that state and local governments must apportion their single-member districts so that each district has roughly the same population. These rules govern elections for state legislative seats, county boards of supervisors, and city councils. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016) (citing *Brown v. Thomson*, 462 U.S. 835, 842–43 (1983)); *Avery v. Midland Cty., Tex.*, 390 U.S. 474, 485–86 (1968) (single-member local government districts); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (state legislative districts). The Enumeration Clause's articulation of "a strong constitutional interest in [the] accuracy" of the census, *Utah v. Evans*, 536 U.S. 452, 478 (2002), facilitates the Constitution's "one-person, one-vote principle," *Evenwel*, 136 S. Ct. at 1130, by furnishing the population data upon which to draw electoral districts.

Governments cannot draw lawful electoral districts if they do not know how many residents they serve and where those residents live. Because jurisdictions rely on census data to draw electoral districts and, like Amici, virtually always apportion districts based on total population, *id.* at 1124, inaccuracies in that data can introduce disparities in the relative size

of districts. Disparities in the size of districts prevent residents—voters and nonvoters alike—from having equal access to their local and state elected representatives, and corrupt "the fundamental principle of representative government in this country . . . of equal representation for equal numbers of people," *Reynolds*, 377 U.S. at 560–61.

There is an acute risk that inaccurate census data will lead to harms to political representation in many jurisdictions, since they contain diverse populations with large Latino and immigrant communities that are not evenly distributed within the jurisdictions. Across Amici and many other jurisdictions, accurate census data is the linchpin to the constitutional guarantee of equal representation.

II. In the Current Macroenvironment, the Proposed Citizenship Question Would Undermine the Strong Constitutional Interest in an Accurate Count.

Adding the proposed citizenship question to the 2020 Census against the backdrop of the current macroenvironment flies in the face of the "strong constitutional interest" in the accuracy of the census.

A. The Enumeration Clause Requires a Census that Accurately Counts Everyone.

The Enumeration Clause requires an "actual Enumeration" of the nation's population every ten years. U.S. CONST. art. I, § 2, cl. 3. This constitutionally

required enumeration, embodied in the decennial census, is the basis of apportionment in the House of Representatives. It was designed to ensure realization of the principle of equal representation according to population, which was of paramount concern to the Framers. As this Court has recognized, the Enumeration Clause reflects both the principle of equal representation and a corresponding "strong constitutional interest in [the] accuracy" of the census. *Evans*, 536 U.S. at 478. Only through a complete and accurate census can equality of representation be achieved; the two are inextricably linked.

The Framers regarded "[e]quality of representation in the Legislature" as "a first Principle of Liberty." John Adams, Letter to Joseph Hawley (Aug. 25, 1776), quoted in C. James Taylor, ed., FOUNDING FAMILIES: DIGITAL EDITIONS OF THE PAPERS OF THE WINTHROPS AND THE ADAMSES (2015). Indeed, "the Moment, the least departure from such Equality takes Place, that Moment an Inroad is made upon Liberty." *Id.* Likewise, Thomas Jefferson noted that equal representation is "so fundamental a principle in a true republic that no prejudice [could] justify its violation. . . ." Thomas Jefferson, Letter to William King (1819), Jefferson Papers, Library of Congress, Vol. 216, p. 38616 (quoted in *Reynolds*, 377 U.S. at 573 n.53). See *Wesberry v. Sanders*, 376 U.S. 1, 14 (1964) (the Constitution requires "equal representation in the House for equal numbers of people").

An accurate census is the constitutionally mandated foundation of equal representation. In *Utah v.*

Evans, *supra*, the Court examined the Enumeration Clause and found that the choices reflected in the Clause demonstrate the Framers' view that accuracy in population data is a necessary component to achieving equal representation. "The [Framers'] decisions, for example, to use population rather than wealth, to tie taxes and representation together, to insist upon periodic recounts, and to take from the States the power to determine methodology all suggest a strong constitutional interest in accuracy." *Evans*, 536 U.S. at 478.

Moreover, the census was never intended to be limited to the voting population. The Framers acknowledged that, by design, "[i]n every State, a certain proportion of inhabitants are deprived of [the] right [to vote but] . . . will be included in the census by which the federal Constitution apportions the representatives." *The Federalist No. 54* (James Madison). In debates surrounding the Fourteenth Amendment, which reinforced the principles of the Enumeration Clause, debate was premised on the idea that even those who are not entitled to vote were then counted in determining representation in Congress. See, *e.g.*, Cong. Globe, 39th Cong., 1st Sess. 353 (1866) (statement of Rep. Rogers) ("Every man in this House knows perfectly well in the several States . . . unnaturalized citizens cannot vote . . . yet for these persons the States are entitled to representation."); *id.* at 359 (1866) (statement of Rep. Conkling) (" 'Persons,' and not 'citizens,' have always constituted the basis."); *id.* at 432 (1866) (statement of Rep. Bingham) ("Under the Constitution as it now is and as it always has been, the entire immigrant

population of this country is included in the basis of representation."); *id.* at 961 (1866) (statement of Sen. Buckalew) ("By the existing Constitution representation is based upon the whole number of inhabitants in the States, exclusive of Indians not taxed," such that "foreigners are counted."); *id.* at 2944 (1866) (statement of Sen. Williams) ("Representation is now based upon population," including "foreigners not naturalized."); *id.* at 2944 (1866) (statement of Sen. Edmunds) ("The fathers who founded this Government acted upon the idea not only that the representation, as a principle, in general was to be based upon population, independent of the franchise, independent of citizenship. . . .").

B. Local Experience Confirms the Citizenship Question Will Cause Severe Inaccuracy.

In the current macroenvironment, the federal administration's plan to include the proposed citizenship question on the 2020 Census will undermine the Framers' understanding and intent for an accurate census that counts every resident. The Census Bureau's own data shows that inclusion of the proposed citizenship question would significantly depress census response rates among noncitizen and Latino populations and, as a result, cause deep inaccuracies in the decennial census data. Pet. App. 114a. Its data suggests a 5.8 percent increase in the failure-to-respond rate among households with noncitizens. *Id.* (citing PX-162, J. D. Brown et al., *Understanding the Quality of Alternative*

Citizenship Data Sources for the 2020 Census, at 38, 42 (Aug. 2018)).

But as the Bureau admits, even a 5.8 percent increase in the failure-to-respond rate is a conservative estimate because the data used in this study was collected in 2016 before the heightened rhetoric on immigration issues and increased fear among immigrant communities that have marked the past two years. *Id.* at 106a, 136a; see also *California*, 2019 WL 1052434, at *5–6. And it does not include the likely significant impact on self-response in households with Latino members, regardless of immigration status. Pet. App. 139a, 146a–150a; see also E. Kissam et al., *San Joaquin Valley Latino Immigrants: Implications of Survey Findings for Census 2020*, at 14–16 (2019), https://perma.cc/7EQU-34G2. Nor, as two courts have found, can the lack of self-response be corrected by the Bureau's plan for Non-Response Follow Up ("NRFU") or use of administrative records. Pet. App. 151a–169a; *California*, 2019 WL 1052434, at *11–17. Other credible analyses, including one from Harvard's Shorenstein Center and one focused on California's San Joaquin Valley, confirm that an even more severe undercount is likely. M. Baum et al., *Estimating the Effect of Asking About Citizenship on the U.S. Census: Results from a Randomized Controlled Trial* (Mar. 2019), https://perma.cc/6X2P-3JRT; Kissam, *supra*.

Although until 1950 the decennial census posed a question relating to citizenship to some subset of the population, the Census Bureau itself has acknowledged that asking about citizenship in the contemporary

era would cause an unacceptable undercount due to changes in the macroenvironment. The Census Bureau took the position in 1980 that "any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count." *Fed'n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980); see also U.S. Census Bureau, *1980 Census of Population and Housing History* p. 1–23 (Aug. 1989), https://perma.cc/N95J-E3UT ("[T]he Bureau believed that the inclusion of [a citizenship question] would have seriously hampered its efforts to achieve a complete count. . . ."). The Bureau's words are no less true today.

As public service providers that work directly with local communities, Amici are uniquely positioned to understand how their residents perceive and engage with the government. Changes in immigrants' views of government generally—and of the federal government in particular—since the 2016 presidential election are well-documented. Indeed, Petitioners and Respondents agree, and the district court found, that the Trump administration's immigration-related actions and discourse have produced a macroenvironment that will amplify the reluctance of Latino and immigrant communities to respond to a census that asks about their citizenship status, exacerbating the disparate undercount that the Census Bureau itself predicted based on pre-2017 data. Pet. App. 106a ("the undisputed evidence—including the Census Bureau's own research—indicates that respondents are likely to react differently to a citizenship question in 2020 than

they would have reacted only three years ago, let alone thirteen years ago"); *id.* at 143a, 146a–147a, 150a, 155a–156a. The court in *California v. Ross* reached the same conclusion. *California*, 2019 WL 1052434, at *6–10. And Amici's recent experience further confirms that this is because their residents view the citizenship question as confirming their fears that the federal government intends to use the census to advance its immigration enforcement efforts.

Amici frequently engage in outreach—through both their own staff and non-profit community-based organizations (CBOs)—to educate residents about government services and involve them in government programs. Recently, this outreach has included efforts to educate residents about the 2020 Census. These outreach efforts reflect precisely what the court below found: the current macroenvironment has heightened undocumented immigrants' and Latinos' "level of concern about using citizenship data for enforcement purposes." Pet. App. 143a; *id.* at 145a–146a (observing that Census Bureau's Census Barriers, Attitudes, and Motivators Survey (CBAMS), PX-662, "noted that '[t]he citizenship question may be a major barrier' in part because people believed that the census's 'purpose is to find undocumented immigrants.'" (quoting CBAMS at 43)); see also U.S. Census Bureau, *2020 Census CBAMS Focus Group Final Report* (Jan. 24, 2019), https://perma.cc/N3ZR-YQUH (focus group data "suggest[s] the [citizenship] question may impede participation among audiences with recent immigration history").

In the summer of 2018, for example, a local CBO sent canvassers to immigrant neighborhoods throughout Santa Clara County to educate residents about the census and prepare them to respond to it. Canvassers involved in this effort reported fear and distrust from residents, even among those who had long known the canvassers used for this purpose. Residents often refused to complete a practice census out of fear that their information could be provided to Immigration and Customs Enforcement (ICE) and used to target them; the citizenship question increased barriers to participation in census efforts. Canvassers reported that even when residents were willing to begin a practice census, when they reached the citizenship question, the tenor of their conversations tended to change, with residents turning tense, agitated, hostile, and fearful. Several canvassers also reported that many residents would shut down the conversation altogether and tell the canvassers to leave when asked about their citizenship.

Canvassers involved in Santa Clara County 2020 Census outreach also reported that residents expressed fear when canvassers explained that federal enumerators would knock on residents' doors—and those of their neighbors—if they did not complete the survey. According to these canvassers, the possibility of a federal employee's in-person visit appeared to amplify residents' fear that the government intended to use the census to find targets for deportation and other immigration consequences. They reported that many residents appeared panicked at the prospect of in-person

follow-up; several vowed never to speak with enumerators. This local experience aligns with the District Court's finding that "to the extent that the macroenvironment will magnify the effects of the citizenship question on self-response, it will also render NRFU operations less effective among the subpopulations that are less likely to self-respond." Pet. App. 155a–156a; see also *id.* at 156a–164a (documenting and substantiating finding). Indeed, the Census Bureau itself has "repeatedly acknowledged that '[t]hose refusing to self-respond due to the citizenship question are particularly likely to refuse to respond in NRFU as well.'" *California*, 2019 WL 1052434, at *13 (quoting document in administrative record).[5]

More recently, another Santa Clara County CBO reported concerns from numerous residents about the privacy of their responses—including many concerns about whether their census responses would be shared with ICE and other enforcement agencies. According to the CBO, reassurances that the law forbids such sharing did little to assuage residents' concerns. This is not surprising: the Census Bureau itself reported that "[e]ven when told their data would be kept confidential, [focus group] participants said they could not trust that the government would not use it against them in the future." *2020 Census CBAMS Focus Group Final*

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[5] The quoted document, a March 1, 2018 memorandum from John M. Abowd to Wilbur Ross, was admitted into evidence in the case now pending before this Court. It was admitted as part of the administrative record at AR 1308–12 and the District Court cited it as the "March 1 Memo." See Pet. App. 51a.

Report, *supra*, at 43; accord Pet. App. 146a (crediting testimony that "'noncitizens and Hispanics are differentially concerned about the confidentiality of a citizenship question' and, thus, 'would be less likely to participate' in a survey that includes such a question").

In Amici's experience, these reactions are not limited to undocumented immigrants. Nationwide, there are almost 11 million people with lawful status—including eight million citizens—living in mixed-status households with at least one undocumented immigrant. In California, more than one in every eight people with lawful status—including two million citizens—live with at least one undocumented immigrant. S. Mathema, *Keeping Families Together* 2, 3 (Mar. 16, 2017), https://perma.cc/U92J-B5PT. As the District Court recognized, the disparate undercount caused by the citizenship question affects all members of these mixed-status households, not only their undocumented members. Pet. App. 9a, 141a. Likewise, the heightened fear and distrust Amici have witnessed in immigrant communities extends to these individuals, too.

Residents have observed a variety of the events and rhetoric that have produced this macroenvironment. Over the last two years, Santa Clara and Los Angeles residents have witnessed stepped-up immigration raids, and ICE has arrested immigrants in courthouses and while dropping off their children at school. *E.g.*, B. Mejia, *ICE arrests 150 immigrants in latest Los Angeles-area operation*, L.A. Times, Sept. 26, 2018, https://www.latimes.com/local/lanow/la-me-ln-ice-arrests-20180926-story.html; B. Mejia & J. Ulloa, *ICE*

arrests in courtrooms escalate feud between California and Trump administration over immigration policy, L.A. Times, Aug. 29, 2018, https://www.latimes.com/local/lanow/la-me-ln-ice-courtroom-arrest-20180829-story.html; *ICE raids and rumors paralyze San Jose communities*, KGO-TV, Mar. 1, 2018, https://perma.cc/E8KG-WWAR; J. Wadsworth, *Nationwide ICE Raids Lead to 21 Arrests in Santa Clara County*, San Jose Inside, Sept. 29, 2017, https://perma.cc/9X35-Z3J5; A. Castillo, *Immigrant arrested by ICE after dropping daughter off at school, sending shockwaves through neighborhood*, L.A. Times, Mar. 3, 2017, https://www.latimes.com/local/lanow/la-me-immigration-school-20170303-story.html. Canvassers confirm that these raids have increased residents' anxiety that the proposed citizenship question is designed to enhance immigration enforcement.

In this climate, a citizenship question would seriously erode the accuracy of census data, leaving local governments ill-equipped to provide critical services and ensure the equal representation our democracy depends upon. Such an undercount will have a profound impact on the residents that Amici serve.

CONCLUSION

The addition of a citizenship question to the 2020 Census will render a significant number of Americans invisible to their governments, threatening real harm to the health and safety of communities across the country. The District Court correctly barred the question, and this Court should affirm that result.

Respectfully submitted,

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